

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 255  
Judiciary

(Delegate Hettleman, *et al.*)

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**Criminal Procedure - Sexual Assault Victims' Rights - Disposal of Rape Kit  
Evidence and Notification**

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This bill requires a health care provider that performs a sexual assault evidence collection kit exam on a victim of sexual assault to provide the victim with written information describing the laws and policies governing the testing, preservation, and disposal of a sexual assault evidence collection kit. The bill specifies when a sexual assault evidence collection kit or other crime scene evidence relating to a sexual assault may be destroyed or disposed of and when such evidence must be retained.

The Office of the Attorney General (OAG) must adopt regulations for uniform statewide implementation of the requirements.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund expenditures to the extent that the Department of State Police (DSP) must expand storage to maintain sexual assault evidence collection kits and other crime scene evidence relating to sexual assault. OAG can implement the bill with existing budgeted resources. Revenues are not affected.

**Local Effect:** Potential significant increase in local expenditures for local law enforcement agencies to accommodate the additional storage requirements necessary to meet the bill's requirements. Local revenues are not affected. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The bill prohibits a law enforcement agency, government agency, or health care provider from destroying or disposing of a sexual assault evidence collection kit or other crime scene evidence relating to a sexual assault within 20 years after the evidence is collected. A law enforcement agency, government agency, or health care provider with custody of a sexual assault evidence collection kit, on written request by the victim, must (1) notify the victim at least 60 days before the date of intended destruction or disposal of the evidence or (2) retain the evidence, as specified.

**Current Law:** Under provisions set forth in the Criminal Procedure Article relating to help for victims of sexual assault offenses, the nearest facility to which a victim of sexual assault may be taken must be designated by the Department of Health and Mental Hygiene in cooperation with (1) the Medical and Chirurgical Faculty of the State of Maryland and (2) the State's Attorney in the subdivision where the sexual assault occurred. A police officer, sheriff, or deputy sheriff who receives a report of an alleged sexual assault must offer the alleged victim the opportunity to be taken immediately to the nearest facility. That offer must be made without regard for the place of the alleged sexual assault or where it is reported. Applicable health care services must be given without charge to a victim of sexual abuse.

Chapter 627 of 2014 requires each hospital that provides emergency medical services to have a protocol for providing timely access to a sexual assault medical forensic examination by a forensic nurse examiner or a physician for a victim of an alleged rape or sexual offense who arrives at the hospital for treatment.

A health care provider that performs a sexual assault evidence collection kit exam on a victim of sexual assault must provide the victim with contact information for the investigating law enforcement agency that the victim may contact about the status and results of the kit analysis. An investigating law enforcement agency that receives a sexual assault evidence collection kit, within 30 days after a request by the victim from whom the evidence was collected, must provide the victim with (1) information about the status of the kit analysis and (2) all available results of the kit analysis except results that would impede or compromise an ongoing investigation.

As soon as reasonably possible following collection of the sample, the Public Safety Article requires testing of DNA evidence that is collected from a crime scene or collected as evidence of sexual assault at a hospital, and that a law enforcement investigator considers relevant to the identification or exoneration of a suspect.

**Background:** Chapter 37 of 2015 required a law enforcement agency or other State or local agency charged with the maintenance, storage, and preservation of sexual assault kit

evidence to conduct an inventory of all kits that were stored by the agency by January 1, 2016, and report the results to OAG. Chapter 37 required OAG to prepare and transmit, by December 1, 2016, a report to the General Assembly detailing (1) the number of untested sexual assault collection kits stored by each agency, (2) the date that each untested sexual assault collection kit was collected, and (3) recommendations for addressing any backlog of untested sexual assault collection kits.

In January 2017, OAG released the required [report](#) detailing the findings of the audit and including recommendations for addressing the backlog. Major findings from the 102 law enforcement agencies surveyed revealed that approximately 3,700 untested sexual assault kits exist statewide. About 60% of the kits were collected between 2009 and 2016. Five percent were collected between 1981 and 1997, and the rest were collected between 1998 and 2009. Most jurisdictions reported no backlog of untested kits because the kits were deliberately not tested due to the agency's testing policies.

According to the report, statutory retention periods for sexual assault evidence kits vary among states that have enacted such laws. According to OAG, Kentucky, Pennsylvania, and Utah are among the states that have recently enacted legislation requiring law enforcement to advise survivors of key information related to testing and database matching. California and Idaho have more comprehensive victim notice requirements, which include mandatory notification to victims prior to destruction of a sexual assault evidence kit.

Best practices in this area include (1) retaining kits, other than anonymous kits, for at least the statute of limitations for the offense; (2) retaining all kits for at least the statute of limitations for the offense, regardless of whether a victim initially elects to prosecute; and (3) ensuring that all kits, after testing, are retained in a police-controlled evidence storage facility, with appropriate humidity, temperature, and related environmental controls as well as chain-of-custody controls. In September 2016, Congress passed the Survivor's Bill of Rights Act of 2016, which suggests that kits be preserved for 20 years as a standard.

Based on the findings, the OAG report outlines a series of recommendations. The recommendations, among other things, include:

- establish a statewide, uniform policy that sexual assault kits be tested within a defined time parameter;
- establish a fixed period of time for retaining untested kits, including anonymous kits, that is no shorter than prescribed by federal law, which requires kits to be preserved for the statute of limitations or 20 years, whichever is shorter;
- implement victim notification requirements that mandate that investigators notify victims when a kit is sent for testing to the crime laboratory and the results of the test; and

- develop a model policy with uniform standards for all jurisdictions and crime laboratories related to the collection, tracking, storage, testing, destroying, and reporting of the kits.

**State Expenditures:** DSP did not provide any information regarding the potential fiscal impact of the bill; however, the Department of Legislative Services advises that general fund expenditures increase minimally to the extent that DSP must expand storage to maintain sexual assault evidence collection kits and other crime scene evidence relating to sexual assault.

Other State agencies with law enforcement duties generally do not investigate sexual assault crimes; therefore, the bill's requirements likely do not result in a fiscal impact for other State law enforcement agencies.

**Local Expenditures:** Local expenditures increase, potentially significantly, for local law enforcement agencies to accommodate the additional storage requirements necessary to retain sexual assault evidence collection kits and other crime scene evidence relating to a sexual assault for a minimum of 20 years after the evidence is collected.

Baltimore City advises that the Baltimore Police Department (BPD) receives approximately 200 sexual assault evidence collection kits per year. The bill requires additional storage time for such kits, which means that BPD's storage capacity needs to be able to accommodate approximately 4,000 kits. Every twenty-first year, approximately 200 kits could be destroyed; however, assuming that numbers continue at the same rate, the threshold remains at 4,000. In order to accommodate the additional storage requirements, BPD needs to purchase a high-density storage unit. A high-density storage unit costs approximately \$350,000. In addition, the storage space necessary to accommodate such a unit results in a one-time cost of approximately \$50,000.

Caroline County reports that the bill necessitates an expansion in storage space in property rooms and temperature-controlled environments. The county is unable to give an estimate of cost; however, the additional space necessary has a potentially significant fiscal impact.

The City of Takoma Park also advises that the bill requires the city to obtain additional storage space. In addition, the city reports that the requirement for longer retention times may create a backlog in cases and require additional personnel for the labs to keep pace.

Montgomery County reports that maintaining sexual assault evidence kits for the required time period is consistent with current practice. However, maintaining other crime scene evidence relating to a sexual assault for the required time period requires additional storage space. The fiscal impact to the county cannot be specifically determined but is significant.

The City of Bowie and the Montgomery County Sherriff's Office advise that the bill has no fiscal impact.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 349 (Senator Zirkin) - Judicial Proceedings.

**Information Source(s):** Baltimore City; Caroline and Montgomery counties; cities of Bowie and Takoma Park; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Department of Legislative Services

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Analysis by: Shirleen M. E. Pilgrim

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510